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FINDINGS OF FACT

Applicant seeks to change Statement of Claim No. 41T-47131-00 for 5.00 GPM flow rate and 3.3 acre-feet (AF) diverted volume from developed spring on Unnamed Tributary of Lion Coulee (also known as Homestead Spring) for the purpose of Stock with a priority date of December 31, 1944. The period of use is January 1st – December 31st and the period of diversion is January 1st – December 31st. The point of diversion and place of use are NWSWNE Section 12 T25N R18E Blaine County. The point of diversion and place of use for Statement of Claim No. 41T 47131-00 are located 38.5 miles southeast of Big Sandy, MT.

1. Water Court Order, dated November 17, 2021, granting Applicants' amendment

The Gasvodas have shown by a preponderance of the evidence that the flow rate of Claim 41 T 47131-00 should be modified to 5.00 GPM. The Gasvodas water right from the source spring already includes the 5.00 GPM flow rate of the developed spring. Correcting the livestock portion of that right to reflect the flow rate diverted from the spring does not increase the water right or have the potential to adversely affect other water rights.

Table 1: WATER RIGHT PROPOSED FOR CHANGE

WR Number	Purpose	Flow Rate	Period of Use	Point of diversion	Place of use	Priority date
41T 47131-00	Stock	5.0 GPM*	1/1 – 12/31	NWSWNE Sec 12 25N 18E Blaine County	NWSWNE Sec 12 25N 18E Blaine County	12/31/1944

*Original water right was decreed 2.0 GPM; Applicant amended flow rate to 5.0 GPM with Water Court November 17, 2021.

CHANGE PROPOSAL

FINDINGS OF FACT

2. Statement of Claim 41T 47131-00 is for stock drinking directly from Spring, Unnamed Tributary of Lion Coulee (also known as Homestead Spring). The Applicant is requesting to add four stock tanks using a gravity flow pipeline to reduce livestock damage to the coulee in that location. The proposal adds four stock tanks (places of use) in these locations:

Tank #1: SWNESW Section 12, T25N R18E Blaine County

Tank #2: SESENW Section 13, T25N R18E Blaine County

Tank #3: SWNESW Section 13, T25N R18E Blaine County

Tank #4: NENWNW Section 24, T25N R18E Blaine County

41T 47131-00 Gasvoda Stock Tank Map

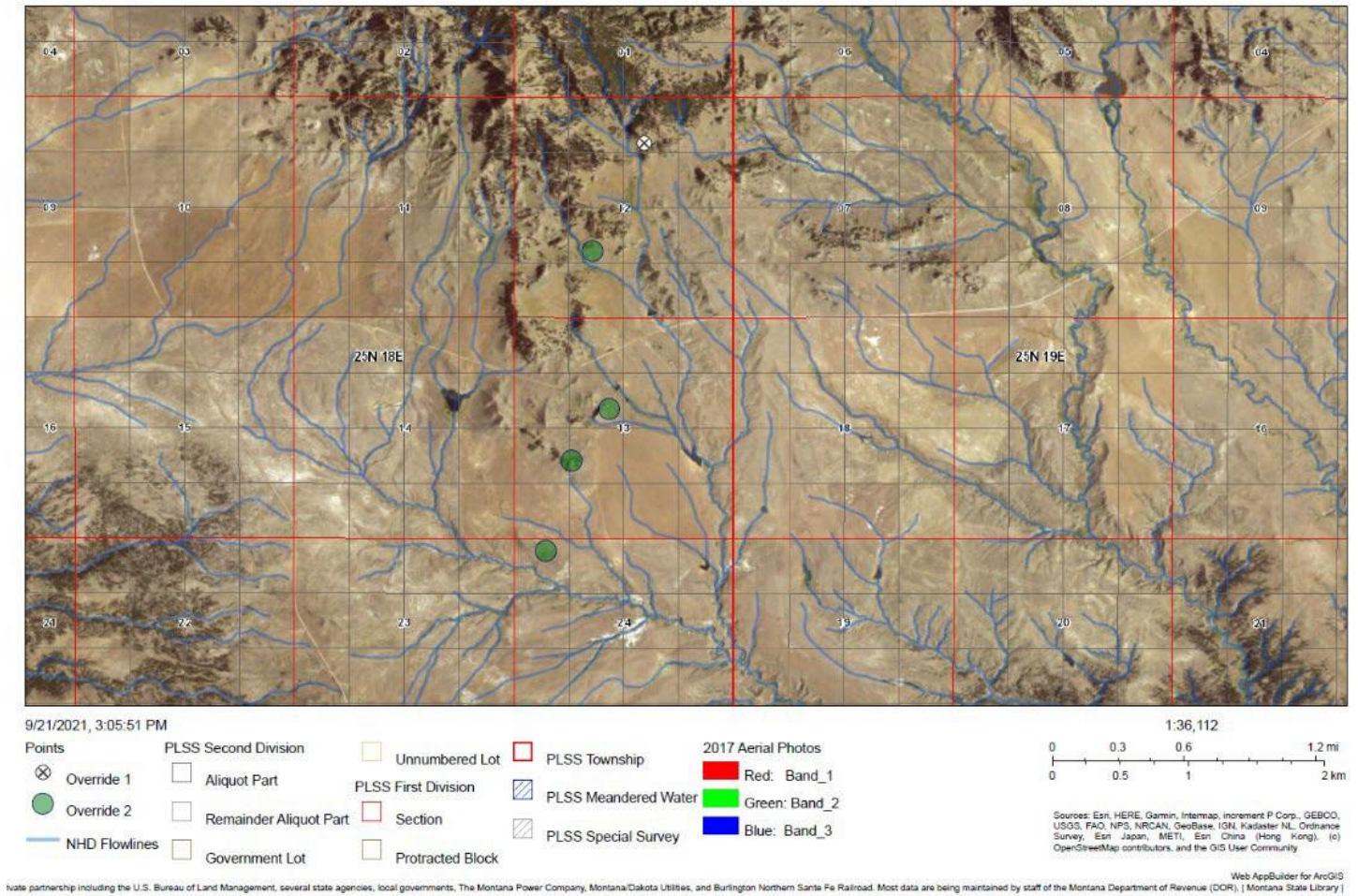


Figure 1: 41T 47131-00 Gasvoda Stock Tank Map

Override 1: Point of Diversion (Spring)

Override 2: New stock tanks (Places of Use)

CHANGE CRITERIA

3. The Department is authorized to approve a change if the applicant meets its burden to prove the applicable § 85-2-402, MCA, criteria by a preponderance of the evidence. Matter of Royston, 249 Mont. 425, 429, 816 P.2d 1054, 1057 (1991); Hohenlohe v. DNRC, 2010 MT 203, ¶¶ 33, 35, and 75, 357 Mont. 438, 240 P.3d 628 (an applicant's burden to prove change criteria by a preponderance of evidence is "more probably than not."); Town of Manhattan v. DNRC, 2012 MT 81, ¶8, 364 Mont. 450, 276 P.3d 920. Under this Preliminary Determination, the relevant change criteria in §85-2-402(2), MCA, are:

- (2) Except as provided in subsections (4) through (6), (15), (16), and (18) and, if applicable, subject to subsection (17), the department shall approve a change in appropriation right if the appropriator proves by a preponderance of evidence that the following criteria are met:
 - (a) The proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under part 3.
 - (b) The proposed means of diversion, construction, and operation of the appropriation works are adequate, except for: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.
 - (c) The proposed use of water is a beneficial use.
 - (d) The applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use or, if the proposed change involves a point of diversion, conveyance, or place of use on national forest system lands, the applicant has any written special use authorization required by federal law to occupy, use, or traverse national forest system lands for the purpose of diversion, impoundment, storage, transportation, withdrawal, use, or distribution of water. This subsection (2)(d) does not apply to: (i) a change in appropriation right for instream flow pursuant to 85-2-320 or 85-2-436; (ii) a temporary change in appropriation right for instream flow pursuant to 85-2-408; or (iii) a change in appropriation right pursuant to 85-2-420 for mitigation or marketing for mitigation.

4. The evaluation of a proposed change in appropriation does not adjudicate the underlying right(s). The Department's change process only addresses the water right holder's ability to make a different use of that existing right. E.g., Hohenlohe, at ¶¶ 29-31; Town of Manhattan, at ¶8; *In the Matter of Application to Change Appropriation Water Right No.41F-31227 by T-L Irrigation Company* (DNRC Final Order 1991).

HISTORIC USE AND ADVERSE EFFECT

FINDINGS OF FACT - Historic Use

5. The stock water right proposed for change is Statement of Claim 41T 47131-00. This water right was filed by Arland Gasvoda and Pamela Gasvoda for 90 head of cattle and 5 horses, which equates to

97.5 animal units (AU) drinking directly from Spring, Unnamed Tributary of Lion Coulee (also known as Homestead Spring) with a priority date of December 31, 1944. Using the stock water use standards established by the Montana Supreme Court of 30 gallons per day per animal unit (GPD/AU), the Department calculates a historically diverted volume of 3.3 AF for 97.5 AU during the period of January 1 through December 31. The total diverted and consumed volume is 3.3 AF, as stock use is considered 100% consumptive.

6. The calculation of historic diverted and consumed volume is as follows: 97.5 AU's ((90 Cattle (1.0 AU) 5 Horses (1.5 AU)) * 30 gal/day (pre-1973) = 2,925 gal/day divided by 24 (hours) = 121.875 gal/hour divided by 60 (minutes) = 2.0 gal/min, 2.0 gal/min = 3.3 AF

7. The historic flow rate was determined by the Water Court Order, dated November 17, 2021, granting Applicants' amendment

The Gasvodas have shown by a preponderance of the evidence that the flow rate of Claim 41 T 47131-00 should be modified to 5.00 GPM. The Gasvodas water right from the source spring already includes the 5.00 GPM flow rate of the developed spring. Correcting the livestock portion of that right to reflect the flow rate diverted from the spring does not increase the water right or have the potential to adversely affect other water rights.

The Gasvodas have shown by a preponderance of the evidence that the flow rate of claim 41 T 47131-00 should be modified to 5.00 gpm. The Gasvodas' water right from the source spring already includes the 5.00 gpm flow rate of the developed spring. Correcting the livestock portion of that right to reflect the water diverted from the spring does not increase the water right or have the potential to adversely affect other water rights. No publication is required under §85-2-233 (6), MCA. This modification resolves the Gasvodas' Motion to Amend.

8. The Department finds the following historic use:

WR Claim #	Priority Date	Diverted Volume	Flow Rate	Purpose (Animal Units)	Consump. Use	Place of Use	Point of Diversion
41T 47131-00	12/31/1944	3.3 AF	5.00 GPM*	Stock (97.5 AU)	3.3 AF	NWSWNE SEC 12 T25N R18E BLAINE COUNTY	NWSWNE SEC 12 T25N R18E BLAINE COUNTY

*Original water right states 2.0 GPM; applicant has amended to 5.0 GPM with Water Court November 17, 2021.

FINDINGS OF FACT – Adverse Effect

8. Historical consumptive use of Statement of Claim 41T 47131-00 has been determined to be 3.3 AF per year. The Applicant proposes to change their stock from 90 head of cattle and 5 horses to 80 head of cattle total. As such, the proposed use will not exceed the historical use as 80 head of cattle equates to 80 AU or 2.7 AF as calculated by the department. The Applicant also proposes to add the four additional stock tanks. The addition of four stock tanks throughout the newly proposed places of use will not increase the flow rate or the amount of water historically diverted or consumed from the source.

9. The calculation of proposed diverted and consumed volume is as follows: 80 AU's (80 Cattle) * 30 gal/day = 2,400 gal/day divided by 24 (hours) = 100 gal/hour divided by 60 (minutes) = 1.7 gal/min

10. 1.7 gal/min = 2.7 AF, a reduction of 0.6 AF.

11. The Department finds the use of water will not increase under the proposed system.

12. The stock tank will be fitted with a functional float valve to prevent overflow from the tank and minimize waste of water.

13. The Department finds no adverse effect will occur as a result of this change.

BENEFICIAL USE

FINDINGS OF FACT

14. Applicant proposes to use water for stock purposes, which is a recognized beneficial use under statute, §85-2-102(5), MCA . The additional stock tanks will provide additional water sources for stock on their grazing pastures. Applicant proposes to use 2.7 AF diverted volume and 5.00 GPM flow rate. This amount is supported by DNRC Rule and Montana Supreme Court Claim Examination standards.

ADEQUATE DIVERSION

FINDINGS OF FACT

15. This project will be diverting from Spring, Unnamed Tributary of Lion Coulee (also known as Homestead Spring), using gravity flow pipeline at a single point of diversion from the developed springhead to reduce livestock damage to the coulee in that location.

16. The point of diversion will be located at NWSWNE Section 12 T25N R18E Blaine County.

POSSESSORY INTEREST

FINDINGS OF FACT

17. The applicant signed the affidavit on the application form affirming the applicant has possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. (Department file)

CONCLUSIONS OF LAW

HISTORIC USE AND ADVERSE EFFECT

18. Montana's change statute codifies the fundamental principles of the Prior Appropriation Doctrine. Sections 85-2-401 and -402(1)(a), MCA, authorize changes to existing water rights, permits, and water reservations subject to the fundamental tenet of Montana water law that one may change only that to which he or she has the right based upon beneficial use. A change to an existing water right may not expand the consumptive use of the underlying right or remove the well-established limit of the appropriator's right to water actually taken and beneficially used. An increase in consumptive use constitutes a new appropriation and is subject to the new water use permit requirements of the MWUA. McDonald v. State, 220 Mont. 519, 530, 722 P.2d 598, 605 (1986)(beneficial use constitutes the basis, measure, and limit of a water right); Featherman v. Hennessy, 43 Mont. 310, 316-17, 115 P. 983, 986 (1911)(increased consumption associated with expanded use of underlying right amounted to new appropriation rather than change in use); Quigley v. McIntosh, 110 Mont. 495, 103 P.2d 1067, 1072-74 (1940)(appropriator may not expand a water right through the guise of a change – expanded use constitutes a new use with a new priority date junior to intervening water uses); Allen v. Petrick, 69 Mont. 373, 222 P. 451(1924)(“quantity of water which may be claimed lawfully under a prior appropriation is limited to that quantity within the amount claimed which the appropriator has needed, and which within a reasonable time he has actually and economically applied to a beneficial use . . . it may be said that the principle of beneficial use is the one of paramount importance . . . The appropriator does not own the water. He has a right of ownership in its use only”); Town of Manhattan, at ¶ 10 (an appropriator's right only attaches to the amount of water actually taken and beneficially applied); Town of Manhattan v. DNRC, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, *Order Re Petition for Judicial Review*, Pg. 9 (2011)(the rule that one may change only that to which it has a right is a fundamental tenet of Montana water law and imperative to MWUA change provisions); In the Matter of Application to Change a Water Right No. 41I 30002512 by Brewer Land Co, LLC, DNRC Proposal For Decision and Final Order (2004).¹

¹ DNRC decisions are available at:
http://www.dnrc.mt.gov/wrd/water_rts/hearing_info/hearing_orders/hearingorders.asp

19. Sections 85-2-401(1) and -402(2)(a), MCA, codify the prior appropriation principles that Montana appropriators have a vested right to maintain surface and ground water conditions substantially as they existed at the time of their appropriation; subsequent appropriators may insist that prior appropriators confine their use to what was actually appropriated or necessary for their originally intended purpose of use; and, an appropriator may not change or alter its use in a manner that adversely affects another water user. Spokane Ranch & Water Co. v. Beatty, 37 Mont. 342, 96 P. 727, 731 (1908); Quigley, 110 Mont. at 505-11, 103 P.2d at 1072-74; Matter of Royston, 249 Mont. at 429, 816 P.2d at 1057; Hohenlohe, at ¶¶43-45.²

20. The cornerstone of evaluating potential adverse effect to other appropriators is the determination of the “historic use” of the water right being changed. Town of Manhattan, at ¶10 (recognizing that the Department’s obligation to ensure that change will not adversely affect other water rights requires analysis of the actual historic amount, pattern, and means of water use). A change applicant must prove the extent and pattern of use for the underlying right proposed for change through evidence of the historic diverted amount, consumed amount, place of use, pattern of use, and return flow because a statement of claim, permit, or decree may not include the beneficial use information necessary to evaluate the amount of water available for change or potential for adverse effect.³ A comparative analysis of the historic use of the water right to the proposed change in use is necessary to prove the change will not result in expansion of the original right, or adversely affect water users who are entitled to rely upon maintenance of conditions on the source of supply for their water rights. Quigley, 103 P.2d at 1072-75 (it is necessary to ascertain historic use of a decreed water right to determine whether a change in use expands the underlying right to the detriment of other water user because a decree only provides a limited description of the right); Royston, 249 Mont. at 431-32, 816 P.2d at 1059-60 (record could not sustain a conclusion of no adverse effect because the applicant failed to provide the Department with evidence of the historic diverted volume,

² See also Holmstrom Land Co., Inc., v. Newlan Creek Water District, 185 Mont. 409, 605 P.2d 1060 (1979); Lokowich v. Helena, 46 Mont. 575, 129 P. 1063(1913); Thompson v. Harvey, 164 Mont. 133, 519 P.2d 963 (1974)(plaintiff could not change his diversion to a point upstream of the defendants because of the injury resulting to the defendants); McIntosh v. Graveley, 159 Mont. 72, 495 P.2d 186 (1972)(appropriator was entitled to move his point of diversion downstream, so long as he installed measuring devices to ensure that he took no more than would have been available at his original point of diversion); Head v. Hale, 38 Mont. 302, 100 P. 222 (1909)(successors of the appropriator of water appropriated for placer mining purposes cannot so change its use as to deprive lower appropriators of their rights, already acquired, in the use of it for irrigating purposes); and, Gassert v. Noyes, 18 Mont. 216, 44 P. 959(1896)(change in place of use was unlawful where reduced the amount of water in the source of supply available which was subject to plaintiff’s subsequent right).

³A claim only constitutes *prima facie* evidence for the purposes of the adjudication under § 85-2-221, MCA. The claim does not constitute *prima facie* evidence of historical use in a change proceeding under §85-2-402, MCA. For example, most water rights decreed for irrigation are not decreed with a volume and provide limited evidence of actual historic beneficial use. §85-2-234, MCA

consumption, and return flow); Hohenlohe, at ¶¶44-45; Town of Manhattan v. DNRC, Cause No. DV-09-872C, Montana Eighteenth Judicial District Court, *Order Re Petition for Judicial Review*, Pgs. 11-12 (proof of historic use is required even when the right has been decreed because the decreed flow rate or volume establishes the maximum appropriation that may be diverted, and may exceed the historical pattern of use, amount diverted or amount consumed through actual use); Matter of Application For Beneficial Water Use Permit By City of Bozeman, *Memorandum*, Pgs. 8-22 (Adopted by DNRC *Final Order* January 9,1985)(evidence of historic use must be compared to the proposed change in use to give effect to the implied limitations read into every decreed right that an appropriator has no right to expand his appropriation or change his use to the detriment of juniors).⁴

Hohenlohe, at ¶¶ 42-45 (internal citations omitted).

21. The Department's rules reflect the above fundamental principles of Montana water law and are designed to itemize the type evidence and analysis required for an applicant to meet its burden of proof. Admin.R.M. 36.12.1901 through 1903. These rules forth specific evidence and analysis required to establish the parameters of historic use of the water right being changed. Admin.R.M. 36.12.1901 and 1902. The rules also outline the analysis required to establish a lack of adverse effect based upon a comparison of historic use of the water rights being changed to the proposed use under the changed conditions along with evaluation of the potential impacts of the change on other water users caused by

⁴ Other western states likewise rely upon the doctrine of historic use as a critical component in evaluating changes in appropriation rights for expansion and adverse effect: Pueblo West Metropolitan District v. Southeastern Colorado Water Conservancy District, 717 P.2d 955, 959 (Colo. 1986)("[O]nce an appropriator exercises his or her privilege to change a water right ... the appropriator runs a real risk of requantification of the water right based on actual historical consumptive use. In such a change proceeding a junior water right ... which had been strictly administered throughout its existence would, in all probability, be reduced to a lesser quantity because of the relatively limited actual historic use of the right."); Santa Fe Trail Ranches Property Owners Ass'n v. Simpson, 990 P.2d 46, 55 -57 (Colo.,1999); Farmers Reservoir and Irr. Co. v. City of Golden, 44 P.3d 241, 245 (Colo. 2002)("We [Colorado Supreme Court] have stated time and again that the need for security and predictability in the prior appropriation system dictates that holders of vested water rights are entitled to the continuation of stream conditions as they existed at the time they first made their appropriation"); Application for Water Rights in Rio Grande County, 53 P.3d 1165, 1170 (Colo. 2002); Wyo. Stat. § 41-3-104 (When an owner of a water right wishes to change a water right ... he shall file a petition requesting permission to make such a change The change ... may be allowed provided that the quantity of water transferred ... shall not exceed the amount of water historically diverted under the existing use, nor increase the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.); Basin Elec. Power Co-op. v. State Bd. of Control, 578 P.2d 557, 564 -566 (Wyo,1978) (a water right holder may not effect a change of use transferring more water than he had historically consumptively used; regardless of the lack of injury to other appropriators, the amount of water historically diverted under the existing use, the historic rate of diversion under the existing use, the historic amount consumptively used under the existing use, and the historic amount of return flow must be considered.)

changes in the amount, timing, or location of historic diversions and return flows. Admin.R.M. 36.12.1901 and 1903.

22. Applicant seeks to change existing water rights represented by its Water Right Claims. The “existing water rights” in this case are those as they existed prior to July 1, 1973, because with limited exception, no changes could have been made to those rights after that date without the Department’s approval. Analysis of adverse effect in a change to an “existing water right” requires evaluation of what the water right looked like and how it was exercised prior to July 1, 1973. In McDonald v. State, the Montana Supreme Court explained:

The foregoing cases and many others serve to illustrate that what is preserved to owners of appropriated or decreed water rights by the provision of the 1972 Constitution is what the law has always contemplated in this state as the extent of a water right: such amount of water as, by pattern of use and means of use, the owners or their predecessors put to beneficial use. . . . the Water Use Act contemplates that all water rights, regardless of prior statements or claims as to amount, must nevertheless, to be recognized, pass the test of historical, unabandoned beneficial use. . . . To that extent only the 1972 constitutional recognition of water rights is effective and will be sustained.

220 Mont. at 529, 722 P.2d at 604; see also Matter of Clark Fork River Drainage Area, 254 Mont. 11, 17, 833 P.2d 1120 (1992).

23. Water Resources Surveys were authorized by the 1939 legislature. 1939 Mont. Laws Ch. 185, § 5. Since their completion, Water Resources Surveys have been invaluable evidence in water right disputes and have long been relied on by Montana courts. In re Adjudication of Existing Rights to Use of All Water in North End Subbasin of Bitterroot River Drainage Area in Ravalli and Missoula Counties, 295 Mont. 447, 453, 984 P.2d 151, 155 (1999)(Water Resources Survey used as evidence in adjudicating of water rights); Wareing v. Schreckendgust, 280 Mont. 196, 213, 930 P.2d 37, 47 (1996)(Water Resources Survey used as evidence in a prescriptive ditch easement case); Olsen v. McQueary, 212 Mont. 173, 180, 687 P.2d 712, 716 (1984) (judicial notice taken of Water Resources Survey in water right dispute concerning branches of a creek).

24. Based upon the Applicant’s evidence of historic use, the Applicant has proven by a preponderance of the evidence the historic use of Statement of Claim No. 41T 47131-00 of 3.3 AF diverted volume and 5.00 GPM flow rate, with consumptive use of 3.3 AF. (FOF Nos. 6—7)

25. Based upon the Applicant’s comparative analysis of historic water use to water use under the proposed change, the Applicant has proven that the proposed change in appropriation right will not adversely affect the use of the existing water rights of other persons or other perfected or planned uses or

developments for which a permit or certificate has been issued or for which a state water reservation has been issued. §85-2-402(2)(b), MCA. (FOF Nos. 8—13)

BENEFICIAL USE

26. A change applicant must prove by a preponderance of the evidence the proposed use is a beneficial use. §§85-2-102(4) and -402(2)(c), MCA. Beneficial use is and has always been the hallmark of a valid Montana water right: “[T]he amount actually needed for beneficial use within the appropriation will be the basis, measure, and the limit of all water rights in Montana . . .” McDonald, 220 Mont. at 532, 722 P.2d at 606. The analysis of the beneficial use criterion is the same for change authorizations under §85-2-402, MCA, and new beneficial permits under §85-2-311, MCA. Admin.R.M. 36.12.1801. The amount of water that may be authorized for change is limited to the amount of water necessary to sustain the beneficial use. E.g., Bitterroot River Protective Association v. Siebel, *Order on Petition for Judicial Review*, Cause No. BDV-2002-519, Montana First Judicial District Court (2003) (*affirmed on other grounds*, 2005 MT 60, 326 Mont. 241, 108 P.3d 518); Worden v. Alexander, 108 Mont. 208, 90 P.2d 160 (1939); Allen v. Petrick, 69 Mont. 373, 222 P. 451(1924); Sitz Ranch v. DNRC, DV-10-13390, Montana Fifth Judicial District Court, *Order Affirming DNRC Decision*, Pg. 3 (2011)(citing BRPA v. Siebel, 2005 MT 60, and rejecting applicant’s argument that it be allowed to appropriate 800 acre-feet when a typical year would require 200-300 acre-feet); Toohey v. Campbell, 24 Mont. 13, 60 P. 396 (1900)(“The policy of the law is to prevent a person from acquiring exclusive control of a stream, or any part thereof, not for present and actual beneficial use, but for mere future speculative profit or advantage, without regard to existing or contemplated beneficial uses. He is restricted in the amount that he can appropriate to the quantity needed for such beneficial purposes.”); §85-2-312(1)(a), MCA (DNRC is statutorily prohibited from issuing a permit for more water than can be beneficially used).

27. Applicant proposes to use water for stock use which is a recognized beneficial use. §85-2-102(5), MCA. Applicant has proven by a preponderance of the evidence that stock use is a beneficial use and that 2.7 acre-feet of diverted volume and 5.00 GPM flow rate of water requested is the amount needed to sustain the beneficial use. §85-2-402(2)(c), MCA (FOF No. 14)

ADEQUATE MEANS OF DIVERSION

28. Pursuant to §85-2-402 (2)(b), MCA, the Applicant must prove by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate. This codifies the prior appropriation principle that the means of diversion must be reasonably effective for the contemplated use and may not result in a waste of the resource. Crowley v. 6th Judicial District Court, 108 Mont. 89, 88 P.2d 23 (1939); In the Matter of Application for Beneficial Water Use Permit No. 41C-11339900 by Three Creeks Ranch of Wyoming LLC (DNRC Final Order 2002)(information needed to prove that proposed means of diversion, construction, and operation of the appropriation works are adequate varies based upon project complexity; design by licensed engineer adequate).

29. Pursuant to §85-2-402 (2)(b), MCA, applicant has proven by a preponderance of the evidence that the proposed means of diversion, construction, and operation of the appropriation works are adequate for the proposed beneficial use. (FOF Nos. 15—16)

POSSESSORY INTEREST

30. Pursuant to §85-2-402(2)(d), MCA, the Applicant must prove by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. See also Admin.R.M. 36.12.1802

31. The Applicant has proven by a preponderance of the evidence that it has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. (FOF No. 17)

PRELIMINARY DETERMINATION

Subject to the terms and analysis in this Preliminary Determination Order, the Department preliminarily determines that this Application to Change Water Right No. 41T 47131-00 should be GRANTED subject to the following.

The Applicant may add four stock tanks (places of use) that will be filled with water diverted from a developed spring from Spring, Unnamed Tributary of Lion Coulee in the SWNESW Section 12, T25N R18E Blaine County, SESENW Section 13, T25N R18E Blaine County, SWNESW Section 13, T25N R18E Blaine County, and NENWNW Section 24, T25N R18E Blaine County.

The period of use and diversion is from January 1 through December 31 for 80 AUs. The diverted volume for the proposed use is 2.7 AF, at a flow rate not to exceed 5 GPM, for stock use. The new places of use (stock tanks) are:

Tank #1: SWNESW Section 12, T25N R18E Blaine County

Tank #2: SESENW Section 13, T25N R18E Blaine County

Tank #3: SWNESW Section 13, T25N R18E Blaine County

Tank #4: NENWNW Section 24, T25N R18E Blaine County

NOTICE

This Department will provide public notice of this Application and the Department's Preliminary Determination to Grant pursuant to §85-2-307, MCA. The Department will set a deadline for objections to this Application pursuant to §§85-2-307, and -308, MCA. If this Application receives a valid objection, it will proceed to a contested case proceeding pursuant to Title 2 Chapter 4 Part 6, MCA, and §85-2-309, MCA. If this Application receives no valid objection or all valid objections are unconditionally withdrawn, the Department will grant this Application as herein approved. If this Application receives a valid objection(s) and the valid objection(s) are conditionally withdrawn, the Department will consider the proposed condition(s) and grant the Application with such conditions as the Department decides necessary to satisfy the applicable criteria. E.g., §§85-2-310, -312, MCA.

DATED this 3rd day of May 2022.

/Original signed by Matt Miles/

Matt Miles, Manager

Havre Regional Office

Department of Natural Resources and Conservation

CERTIFICATE OF SERVICE

This certifies that a true and correct copy of the PRELIMINARY DETERMINATION TO GRANT was served upon all parties listed below on this 3rd day of May 2022, by first class United States mail.

ARLAND W. & PAMELA K. GASVODA
4496 EAGLETON RD
BIG SANDY, MT 59520

Megan
Blauwkamp



Digitally signed by Megan
Blauwkamp
Date: 2022.05.03 12:24:32
-06'00'

Havre Regional Office, (406) 265-5516